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G. A. 1404 / 96

7- APPEAL OF PRISONER

No. 438

Name ST 24214

Father's Name 27/12/14

resident श्री प्रिन्सिपल

Age 32 Sentenced to आजीवन कारावास on 9 - दिसम्बर

Under Section 302 IPC by प्रद्युम्न अति. सग. न्याया. जगदलक्षर

S.T. No 296/93

मानजीय-पी के पी खुरे

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- N.

2. Date of which copy received :- 9.5.96

3. Date on which appeal sent :- 12.5.96

4. Whether the prisoner wished to be represented or not.

Yes / ~~No~~

No. 438 Name अथराम शिवाजीराव

Continued in मिठा Jail प्रथम श्रेणी अगदलंकर

No. 317 / Octagon/96 Dated 17/5/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Tajdal pu
together with a copy of Judgement or order passed in the case
for favour of transmission to the proper Appellate Court.

~~Referred to~~ Superintendent-Central/Distt/Sub-Jail.

Date of receipt in C.J.M.'s Office. 24/11/96

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court. —

No. 9 dated 25/5/96

Forwarded to the H'ble sessions Judge Bagdikian

C.H. MAGISTRATE. मुख्य न्यायिक दण्डाधिकारी
आदिलपुर

Date of receipt in Appellate Court:

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Fakhruddin,
Hon'ble Shri Vijay Kumar Shrivastava, JJ.

CRIMINAL APPEAL NO.1404 of 1996

Appellant : Jayram, S/o Sitaram
R/o Village Chitalanka
PS Dantewada
Dist-Dantewada (CG)

Vs

Respondent : State of Chhattisgarh

PRESENT:

Shri Avinash Mishra, counsel for the appellant.

Shri UNS Deo, Additional Public Prosecutor, Shri Akhil Mishra
& Shri CR Sahu, Panel lawyers for the State.

J U D G M E N T
(Dated 1st May 2006)

Per Hon'ble Shri VK Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence dated 09.05.1996 passed in Sessions trial No.296/93 by First Additional Sessions Judge, Bastar at Jagadalpur, whereby the appellant was held guilty for committing the offence of murder, and was convicted under Section 302 IPC and has been sentenced to undergo imprisonment for life.

2) Deceased Beni Das was a peon in the High School, Dantewada. On 01.01.1992, at 10 am the deceased went on his duty,

but did not return back in the evening, a search was made by his younger brother up to 9 pm to know his whereabouts, but the attempt remained a futile exercise. On the next day, his son Mahant Das Bairagi lodged FIR and merged intimation after identifying the dead body of Beni Das which was lying on the bank of river Dankine. Investigating Officer went on the spot, after inquest, prepared inquest report. The dead body of Beni Das was sent for postmortem. Blood stained earth, control earth were collected and seized as also one underwear, a pair of chappal and one closed envelop found on the spot was also collected and seized. Spot map was prepared. Dr SK Dhagamwar conducted autopsy, who describing all the injuries found on the body of the deceased, gave his report. He was of the opinion that the cause of death was due to haemorrhage and shock and nature of the death was homicidal. Witnesses were examined under Section 161 of the Cr.P.C. One Kurta, one woolen sweater and one Gagri (Sharp weapon) had been seized from the appellant. On identification, the sweater was identified by wife of the deceased and according to identification, it belonged to the deceased. The seized weapon was sent for examination to the Medical Officer, who on examination, opined that injuries found and the body of the deceased may be caused by that weapon. All the articles seized were sent to the Forensic Science Laboratory. Chemical Examiner on examination found presence of blood on stained earth, Kurta and underwear. After completion of the investigation, challan was laid in the Court of

Judicial Magistrate First Class, Dantewada, who committed the case to the Court of Sessions for trial.

3) Charge under Section 302 of the IPC was framed against the appellant and the same was read over and explained to him, who absconded the guilt. His defence was that he has been falsely implicated in the case.

4) The case of the prosecution against the appellant was based on circumstantial evidence. Learned trial Court held that wife of the appellant apprised daughter of the deceased that appellant had killed a person and showed her a sweater. The sweater recovered from the appellant was identified by the wife of the deceased. Learned trial Court also raised presumptions that appellant might have killed the deceased for some monetary gain and the presence of blood stains on kurta of the appellant might have been caused as a result of injuries caused by him to the deceased, and relying on these circumstances held the appellant guilty for committing offence of murder and accordingly convicted and sentenced.

5) For convicting a person under circumstantial evidence, the law is settled, and in order to convict a person on the basis of circumstantial evidence the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the case of Nasar Ahmed Vs. State of Bihar reported in AIR 2001 Supreme Court 2416 i.e., in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that

circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation; which is not consistent with the hypothesis of the guilt of the accused.

6) The appellant did not challenge the injuries found on the body of deceased and nature of death; even otherwise, from the evidence of Dr SK Dhagamwar (PW-8) and his autopsy report (Ex.P/11) proved by him, it is established that following injury was found on the body of the deceased and his death was the result of haemorrhage and shock and nature of death was homicidal.

*Sharp cut wound throat 12cm x 8cm
Rhomboid in shape up to the depth of muscle
layer over the vertebral column.*

7) The first circumstance relied on by the prosecution was that the wife of appellant, on the next day apprised daughter of the deceased that her husband had killed a person and also showed her a sweater. Wife of the appellant was not examined by the prosecution. Jaimani, to whom wife of the appellant gave information, was also not examined by the prosecution. Therefore, in absence of both these witnesses, it can not be held proved that appellant's wife told Jaimani (daughter of the deceased) that her husband killed a person and also showed a sweater.

8) Second circumstance was recovery of woolen sweater of the deceased. Although from evidence of Mehtar Das Bairagi (PW-3) it is proved that from the house of appellant, one kurta, one sweater and one Gagri (sharp weapon) had been seized vide seizure memo (Ex.P/5). From the evidence of TP Dwivedi (PW-2), the sweater was identified by wife of the deceased as the sweater of her deceased husband. The sweater identified by wife of the deceased was the same which was recovered from the appellant; to connect the same the investigating Officer or any other witnesses have not been examined. That apart, there is no evidence to establish that on the date of incident deceased was wearing the sweater which was identified by his wife.

9) Third circumstance was the recovery of kurta of the appellant which was stained with blood. Although, according to the evidence of Mehtar Das Bairagi (PW-3) one kurta was seized from the appellant and report (Ex.P/10) establishes that blood stains were found on the kurta, but that report does not unveils that it was stained with human blood. That apart, there is no evidence to connect that the same kurta had been sent to FSL, which was recovered and seized from appellant and there is no evidence to establish that the said kurta was wore by the appellant on the date of incident.

10) No other circumstance has been relied on by the prosecution and from the aforesaid discussion it is clear that learned trial Court grossly erred to appreciate the evidence and neither the

circumstances relied on were proved nor they form a chain so fully as to unerringly point only to the guilt of the appellant. Even holding that there is no evidence that accused has killed the deceased during the night of 01.01.1993, yet proceeded that under Section 114 of the Evidence Act, the presumption can be drawn that for monetary gain, appellant killed the deceased. Only on surmises and conjuncture, the trial Court held the appellant guilty for committing offence of murder of the deceased Benidas.

11) In the result, the appeal succeeds conviction and sentence under Section 302 of the IPC passed by the trial Court is set aside and the appellant is acquitted of the charge. It is directed that appellant be set at liberty forthwith if not required to be detained for any other reason.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge